



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO ROCKY TOP WOOD PRESERVERS, INCORPORATED Permit No. VA0080071

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and 8(d), between the State Water Control Board and Rocky Top Wood Preservers, Incorporated, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality.
4. "Facility" means the RTWP business located at 1050 North Main Street, in Rocky Mount, Virginia.
5. "Order" means this document, also known as a Consent Special Order.
6. "Permit" means VA0080071, which was reissued March 11, 2004, and expires March 10, 2009. The Permit authorizes a storm water discharge into an unnamed

tributary (UT) of Powder Mill Creek, a tributary of the Roanoke River in the Roanoke River Basin.

7. "Regulation" means the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9 VAC 25-31-10 *et seq.*
8. "RTWP" means Rocky Top Wood Preservers, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
10. "Va. Code" means the Code of Virginia (1950), as amended.

SECTION C: Findings of Fact and Conclusions of Law

1. RTWP owns and operates a wood preserving facility located at 1050 North Main Street in Rocky Mount, Virginia. VPDES Permit number VA0080071 was issued to RTWP by the Board for discharge of storm water from the Facility. The Permit includes a Whole Effluent Toxicity (WET) limitation and quarterly toxicity monitoring requirements.
2. On March 9, 2000, DEQ issued Notice Of Violation (NOV) number 00-01-WCRO-045 to RTWP for violation of the Facility's acute WET concentration minimum limit for December 1998, March 1999, August 1999, and November 1999. On April 10, 2000, RTWP reported an additional violation of the limit for March 2000. On September 10, 2003, DEQ issued NOV number W2003-09-W-0007 to RTWP for violations of the Facility's acute WET concentration minimum limit for November 2002, May 2003, and July of 2003.
3. RTWP has worked in good faith with DEQ staff in attempting to identify solutions to the effluent toxicity problem since the problem was first identified. Various interim corrective measures that have been implemented over the years, included placing limestone rip-rap in drainage areas to increase pH so that the metals would stay in solution, washing lumber charges after treatment, implementing mandatory vehicle traffic routes to minimize the spread of contaminated soils from one area of the plant to another, paving of the yard area, and installing in storm drain inlets Hydro-Kleen treatment units which were designed to filter and remove organics and metals during the first 30 minutes of a storm event. Those measures however, proved insufficient to ensure consistent compliance with the WET limit.
4. Ultimately RTWP changed the type of wood preservation chemicals utilized in its manufacturing process. Since this change RTWP has complied with its WET limit.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders RTWP, and RTWP voluntarily agrees, to pay a civil charge of \$2,400 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment check must include RTWP's Federal Identification Number and a notation that it is for payment of a civil charge pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of RTWP, for good cause shown by RTWP, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to RTWP by DEQ on March 9, 2000 and September 10, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, RTWP admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. RTWP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. RTWP declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by RTWP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. RTWP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. RTWP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RTWP shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which RTWP intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and RTWP. Notwithstanding the foregoing, RTWP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to RTWP. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RTWP from its obligation to comply with any statute,

regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, RTWP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day JUNE 2, 2006.

FOR Steven A. Dietrich
David K. Paylor, Director
Department of Environmental Quality

RTWP voluntarily agrees to the issuance of this Order.

By: Carey Garst

Date: 04/07/06

Commonwealth of Virginia

City/County of Franklin

The foregoing document was signed and acknowledged before me this 7th day of
April, 2006, by Carey Garst, who is
(name)

President of RTWP, on behalf of the Corporation.
(title)

Karen P. Young
Notary Public

My commission expires: 12/31/2008